

ENVIRONMENTAL QUALITY

Chapter 80

AIR AND WATER QUALITY - TAX CERTIFICATION

Sub-Chapter 1

Tax Certification for
Pollution Control Equipment

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Sub-Chapter 1

Tax Certification for
Pollution Control Equipment

17.80.101 DEFINITIONS For the purpose of this subchapter, the following definitions apply, in addition to the definitions contained in 15-6-135, MCA:

(1) "Apportionment" means the identification of the extent to which multi-purpose property, facilities, machinery, devices or equipment are used for pollution control purposes.

(2) "DEQ" means the Montana department of environmental quality.

(3) "DOR" means the Montana department of revenue.

(4) "Substantial compliance" means either full compliance with all applicable rules, laws, orders, or permit conditions, or noncompliance with such requirements, provided that incidents of noncompliance are isolated or casual, do not involve continuous acts or patterns of noncompliance, and do not result in the initiation by DEQ of an administrative or judicial enforcement action. For purposes of this definition, issuance by DEQ of a citation or a notice of violation, without an accompanying compliance or penalty order, does not constitute the initiation of an enforcement action. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.80.102 APPLICATION FOR CERTIFICATION AS AIR OR WATER POLLUTION EQUIPMENT

(1) Applications for certification pursuant to this subchapter must be made on forms prescribed by DEQ. Application forms must be made available by DOR.

(2) The applicant shall submit an original signed application to DEQ with copies to DOR and the county commissioners of the county in which the property is located. Applications must contain the following information:

(a) a detailed description of the air or water pollution equipment and how it functions to control pollution. Design or engineering drawings showing the placement and use of the equipment must be provided;

(b) if the equipment is used for purposes other than pollution control, a description of the extent to which the equipment is or will be used for each purpose;

(c) itemization of capital and operating costs associated with the equipment, with apportionment of costs to multiple purposes, when applicable;

(d) identification of existing or pending air or water quality permits for the equipment, and a description of the applicant's compliance status in regard to rules, laws, orders, and permit conditions applicable to the equipment;

(e) certification that the applicant is in substantial compliance with all rules, laws, orders, and permit conditions applicable to the equipment; and

(f) certification that the information provided in the application is correct and complete.

(3) Within 45 days of receipt of an application, DEQ shall determine whether additional information is required to make a certification decision. If DEQ determines that additional information is required, DEQ shall notify the applicant in writing and specify the date by which any additional information must be submitted. If the information is not submitted as required, the application must be considered withdrawn unless the applicant requests in writing, and DEQ approves, an extension of time for submission of the additional information. DEQ may make additional information requests within 45 days after receipt of any required additional information, following the same procedure as the original information request. DEQ shall notify DOR and the appropriate county commissioners of any information requests.

(4) DEQ shall issue written notice to the applicant of the department's determination that a certification application is complete. DEQ shall make a final decision whether to certify within 120 days after the date it issues the notice the application is complete. DEQ shall provide written notice of its final determination to the applicant, DOR, and the appropriate county commissioners.

(5) Monetary valuations or costs used by DEQ in the certification process are for purposes of identifying qualifying portions of the equipment, and are not binding on DOR or a county as to market value for tax purposes. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.80.103 ELIGIBILITY CRITERIA (1) To be certified as air and water pollution equipment, property, facilities, machinery, devices, and equipment must meet the definition of air and water pollution equipment contained in 15-6-135, MCA.

(2) As provided in 15-6-135(2)(a), MCA, operational techniques that reduce pollutants but do not require the installation or modification of specific facilities, machinery, devices, or equipment are not eligible for certification under this subchapter.

(3) To the extent that air or water pollution equipment is used for production or any purpose other than pollution control, it is not eligible for certification under this subchapter. Pursuant to the procedures in ARM 17.80.104, DEQ shall apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control.

(4) For certification to be granted, an applicant must be in substantial compliance, on the date of application, with all rules, laws, orders, and permit conditions applicable to the equipment that is the subject of the application. Certification shall remain in effect only for as long as substantial compliance continues. Procedures for compliance inspection are as provided in ARM 17.80.105.

(5) Examples of equipment or facilities that may, to the extent used for pollution control purposes, qualify for certification include, but are not limited to, the following:

- (a) inertial separators (cyclones, multiclones);
- (b) wet collection devices (scrubbers);
- (c) electrostatic precipitators;
- (d) cloth filter collectors (baghouses);
- (e) vapor recovery systems;
- (f) wastewater treatment facilities;
- (g) plants or equipment that render water safe for discharge;
- (h) wastewater recycling systems that store or prevent pollutants from reaching the environment;
- (i) spill control systems;
- (j) secondary storage pond liners;
- (k) monitoring wells that are part of a pollution control system.

(6) Examples of equipment or facilities that generally are not certifiable as air or water pollution equipment include, but are not limited to, the following:

- (a) continuous air emission monitors that function as emission indicators but are not part of an air emission control system;
- (b) dispersion devices such as stacks, chimneys, or vents;
- (c) non-wastewater treatment facilities;
- (d) stack sampling equipment, platforms, access

facilities, stack extensions, portable monitoring equipment, or any other type of measuring device that is not part of a pollution control system;

(e) fuel changes except to the extent they are used for pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment; and

(f) energy conservation measures, except to the extent they are used for pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.80.104 APPORTIONMENT PROCEDURES (1) When air or water pollution equipment is used for production or any other purpose in addition to pollution control, DEQ shall conduct an apportionment so that the certified portion of the multi-purpose equipment reflects the extent to which it is used for pollution control purposes.

(2) The applicant shall provide DEQ with all information necessary to conduct an apportionment under this rule. DEQ shall conduct the apportionment based upon the specific facts and circumstances of each case. Methods for apportionment include, but are not limited to, the following:

(a) determination of the difference in value between equipment with integrated pollution controls and similar equipment without pollution controls. An example is a fluidized bed boiler with limestone injection for air emission control. The value of the fluidized bed boiler would be compared with the value of a similarly-sized conventional boiler, and the difference would be certified as the air pollution equipment value;

(b) determination of the difference in value between a facility designed for multiple purposes and a facility designed for pollution control only. The difference would be denied certification;

(c) distinguishing between equipment in a facility or process that removes pollutants and equipment that is used for production or other purposes;

(d) any other method based on specific facts and circumstances that achieves a fair and reasonable apportionment of pollution control and other uses. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.80.105 COMPLIANCE (1) DEQ shall conduct periodic inspections of certified pollution control equipment for the purpose of determining whether the applicant is in substantial compliance with all applicable rules, laws, orders, and permit conditions. These inspections may be part of any required air or water quality inspection.

(2) DEQ shall provide written notice of its determination of a failure of substantial compliance to the applicant, the DOR, and the appropriate county commissioners. In the event that substantial compliance is restored, the applicant must provide DEQ with written notice, and DEQ shall conduct an inspection and report its compliance determination to the applicant, the DOR, and the appropriate county commissioners within a reasonable time thereafter.

(3) DEQ must submit certification and compliance determinations to DOR no later than February 1 of the year following the year for which tax adjustments are sought. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

17.80.106 INFORMAL CONFERENCE (1) DEQ shall provide an applicant with an opportunity for an informal conference for reconsideration of a department determination regarding certification or noncompliance. The applicant must request an informal conference in writing within 10 days after receiving a notice of certification or noncompliance. (History: 15-6-135, MCA; IMP, 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95; TRANS, from DHES, 1996 MAR p. 2285.)

